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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,758

09/30/2003

Pamela Hardison

06-0320-PHA.RA

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07/07/2010

WILLIAMSON INTELLECTUAL PROPERTY LAW, LLC
1870 THE EXCHANGE, SUITE 100
ATLANTA, GA 30339

EXAMINER

FLICK, JASON E

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

07/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/674,758	Applicant(s) HARDISON, PAMELA	
	Examiner JASON FLICK	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Examiner acknowledges the reply filed on 04/06/2010 in which claims 1, 14, and 22 were amended. Currently, claims 1-20 and 22 are pending for examination in this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 14, and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 14, and 22 have been amended to indicate an upper and lower section which is uniform in diameter. Applicant's representative points to figures 1-2 and page 10, lines 15-16 for support. However, figures may not be used to show support for limitations relating to scale/relative size of elements (MPEP 2125). Furthermore, paragraph [0019] of applicant's disclosure specifically states that the drawings of the disclosure are not necessarily drawn to scale. In addition, the written portion of the disclosure (page 10, lines 15-16) cited by applicant's representative does not provide support for the amended claims. This portion of the disclosure (which supports limitations of claim 7) merely states the splice

Art Unit: 3763

portion has “substantially the same diameter as the diameter of the length of material.”

This does not support the claim that the length of material, or the upper and lower portions for that matter, must be the same diameter throughout.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giacona, III (PGPub 2005/0092789), in view of Chu et al. (PGPub 2004/0225181).

7. [Claims 1-4, 6-8, and 14] Giacona, III teaches a device and method for retaining objects about a person (figure 1, item 10) (attaching an object to said lower section) (figures 1 and 2) comprising a length of material (a chain of linked elements) (figure 1, items 11 and 26) joined together so as to form an upper section (figure 1, item 11) and a lower section (figure 1, item 26), wherein said upper section is dimensioned to fit over a user's head (figure 2), and wherein a medical appliance is capable of being attached to

Art Unit: 3763

said lower section (figures 3 and 4); further comprising a first (figure 1, item 28) and a second end (figure 1, item 29) joined together by a smooth splice (figure 1, items 15 and 30; paragraph [0109]), thereby forming a continuous loop comprising a top section and a bottom section (figure 1), wherein said splice has a diameter and said length of material has a diameter, and wherein said splice diameter is approximately equal to said length of material diameter (figure 1). Giacona, III does not specifically state that the material forming the upper and lower sections is uniform in diameter. However, Chu teaches a support apparatus comprising upper and lower sections wherein the material is uniform in diameter (figure 3, item 16; paragraph [0035]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III, with the use of a uniform length of material, as taught by Chu, in order to increase ease of use, as well as to allow for easier adjustment of attachments across all length of the material.

8. [Claims 9-11 and 15-17] Giacona, III and Chu teach the limitations of claims 8 and 14, upon which claims 9-11 and 15-17 depend. In addition, Giacona, III discloses a bottom section comprising at least two segments of said length of material gathered together which lie proximate and parallel to one another (figure 1).

9. [Claims 12, 13, 18 and 19] Giacona, III and Chu teach the limitations of claims 9 and 16, upon which claims 12, 13, 18, and 19 depend. Giacona, III further teaches at least one clasp for securing the at least two segments together (figure 1, item 36).

Art Unit: 3763

10. [Claim 5] Giacona, III and Chu teach the limitations of claim 1, upon which claim 5 depends. In addition, Chu discloses the length of material may be formed from nylon (paragraph [0036]).

11. Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giacona, III (PGPub 2005/0092789), in view of Chu et al. (PGPub 2004/0225181), in further view of Millen (USPN 6,129,709).

12. [Claim 20] Giacona, III and Chu teach the method steps of claim 14, upon which claim 20 depends. Although Giacona, III teaches attaching an article through the bottom loop of the support apparatus, Giacona, III does not specifically disclose pinning the object to the lower portion via at least one safety pin. However, Millen teaches a suspension apparatus for supporting medical devices wherein medical appliances are attached via at least one safety pin (figures 1a and 2, item 150; column 3, lines 54-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III and Chu, with the use of safety pins, as taught by Millen, in order to provide an alternative means of attaching items to the supporting structure.

13. [Claim 22] Giacona, III teaches a device and method for retaining objects about a person (figure 1, item 10) comprising a length of material joined together (figure 1, items 11 and 26) forming a spliced loop (figure 1, items 15 and 30; paragraph [0109]), said spliced loop further comprising at least two segments of said length of material, wherein said at least two segments lie proximate and parallel one another (figure 1), wherein said length of material has first end (figure 1, item 28) and second end (figure

Art Unit: 3763

1, item 29). Giacona, III does not specifically state that the material forming the upper and lower sections is uniform in diameter. However, Chu teaches a support apparatus comprising upper and lower sections wherein the material is uniform in diameter (figure 3, item 16; paragraph [0035]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III, with the use of a uniform length of material, as taught by Chu, in order to increase ease of use, as well as to allow for easier adjustment of attachments across all length of the material. Although Giacona, III teaches attaching an article through the bottom loop of the support apparatus, Giacona, III does not specifically disclose at least one fastener for attaching items to the first and second end. However, Millen teaches a suspension apparatus for supporting medical devices wherein medical appliances are attached via at least one fastener (figures 1a and 2, item 150; column 3, lines 54-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure taught by Giacona, III and Chu, with the use of fasteners, as taught by Millen, in order to provide an alternative means of attaching items to the supporting structure.

Response to Arguments

14. Applicant's arguments with respect to claims 1-20 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3763

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON FLICK whose telephone number is (571)270-7024. The examiner can normally be reached on Monday through Thursday, 7:00am to 5:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F./

Examiner, Art Unit 3763

06/29/2010

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763